

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARK ALLEN WASMUTH, A living )  
Immortal Spiritual Being, MARK ALLEN )  
WASMUTH, A living physical man, )  
MEREDITH PHILLIPPI WASMUTH, )  
A living Immortal Spiritual Being, )  
MEREDITH PHILLIPPI WASMUTH, )  
A living physical woman, )

Plaintiffs, )

v. )

SANJIV DAS, Acting artificially as a )  
ordinary/officer/president for CitiMortgage )  
Inc., PAUL INCE, Acting artificially as )  
ordinary/officer/CFO for CitiMortgage Inc., )  
JERRY OCHEL TREE, Acting artificially as )  
ordinary/officer/president for First Bank Inc., )  
ERIC P. CREDLE, Acting artificially as a )  
ordinary/officers for First Bank Inc., )  
JOHN WALSH, Acting artificially as an )  
ordinary/Comptroller of the Currency, )  
BILL BECKMANN, Acting artificially as a )  
ordinary/officers for MERS, )  
MARIA LEONOR GERHOLDT, Acting )  
artificially as officers for Nationwide Title )  
Clearing and agent for the State of Florida, )  
DONALD R. KIMBLE, Acting artificially )  
as a ordinary/officer for Huntington )  
Bancshares Inc., STEPHEN D. STEINOUR, )  
Acting artificially as a ordinary/officer for )  
Huntington Bancshares Inc., MARY JO )  
MCGOWAN, Acting artificially for Nationwide )  
Title Clearing, MARY JO MCGOWAN, )  
Acting artificially as a ordinary/officers for )  
Huntington Bank Shares, )

Defendants. )

1:11CV1013

## ORDER

BEATY, District Judge.

This matter is before the Court on a Recommendation of the United States Magistrate Judge recommending that the Motion to Set Aside State Court Entry of Default and Default Judgment [Doc. #38] and the Motion to Dismiss or in the Alternative Motion for Summary Judgment [Doc. #25] filed by Defendants United States of America and John Walsh be granted, and that the action against the remaining Defendants be remanded to the Chatham County District Court for disposition of other pending motions. The Recommendation was filed on July 9, 2013, and notice was served on the parties pursuant to 28 U.S.C. § 636(b). On July 26, 2013, Plaintiffs Mark Allen Wasmuth and Meredith Phillippi Wasmuth filed timely Objections to the Recommendation [Doc. #49]. Thereafter, Defendants United States of America and John Walsh filed a timely Reply [Doc. #51] to Plaintiffs' Objections. The Court has now reviewed de novo<sup>1</sup> the Objections and the portions of the Recommendation to which objection was made, and finds that the Objections do not change the substance of the United States Magistrate Judge's ruling. The Magistrate Judge's Recommendation [Doc. #45] is therefore affirmed and adopted for the reasons set forth therein.

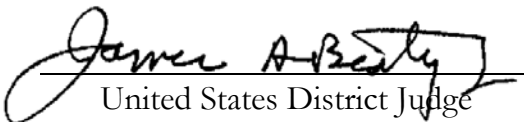
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<sup>1</sup> The Court notes that a Motion to set aside an entry of default, when no default judgment was also entered, may be considered a non-dispositive matter subject to the clearly erroneous or contrary to law standard of review by this Court. See Pinkston v. Atlanta Reg'l Comm'n, No. 1:07-cv-1197-WSD-RGV, 2007 WL 4224814, at \*2 (N.D. Ga. Nov. 27, 2007); J & J Sports Prods., Inc. v. Martinez, No. 1:11CV754, 2013 WL 2147790, at \*1 n.2 (M.D.N.C. May 16, 2013). However, because the State court in the present matter entered both an Entry of Default and a Default Judgment against Federal Defendant John Walsh, the Court finds that the Motion to Set Aside State Court Entry of Default and Default Judgment [Doc. #38] at issue in this case to be at least potentially dispositive. See SLC Turnberry, Ltd. v. The American Golfer, Inc., 240 F.R.D. 50, 52 (D. Conn. 2007). Therefore, the Court has undertaken a de novo review to the extent that Plaintiffs object to the recommendation that the Motion to Set Aside State Court Entry of Default and Default Judgment be granted.

As such, the Court will grant the Motion to Set Aside State Court Entry of Default and Default Judgment [Doc. #38] and the Motion to Dismiss or in the Alternative Motion for Summary Judgment [Doc. #25] filed by Defendants United States of America and John Walsh. As noted in the Recommendation, following the dismissal of Defendants United States of America and John Walsh, the only claims remaining in this case appear to be certain state-law claims against Defendants Sanjiv Das, Paul Ince, Jerry Ocheltree, Eric P. Credle, Bill Beckmann, Maria Leonor Gerholdt, Donald R. Kimble, Stephen D. Steinour, and Mary Jo McGowan. The parties are not completely diverse in this case, and the Court finds no alternative basis for original jurisdiction. For the reasons set forth in the Recommendation, the Court, in its discretion, declines to exercise supplemental jurisdiction over the remaining claims in this case. Therefore, the Court will remand this matter to the Chatham County District Court for disposition of all remaining motions.

IT IS THEREFORE ORDERED that the Motion to Set Aside State Court Entry of Default and Default Judgment [Doc. #38] and the Motion to Dismiss or in the Alternative Motion for Summary Judgment [Doc. #25] filed by Defendants United States of America and John Walsh are hereby GRANTED. Absent any basis for original jurisdiction over the remaining claims against Defendants Sanjiv Das, Paul Ince, Jerry Ocheltree, Eric P. Credle, Bill Beckmann, Maria Leonor Gerholdt, Donald R. Kimble, Stephen D. Steinour, and Mary Jo McGowan, IT IS FURTHER ORDERED that this case is REMANDED to the Chatham County District Court for disposition of all remaining motions.

This, the 26<sup>th</sup> day of August, 2013.

  
United States District Judge